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DOLE FOOD COMPANY, INC.,
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9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 CHAD BRAZIL, an individual, on his own
14 behalf and on behalf of all others similarly
15 situated,

16 Plaintiff,

17 v.

18 DOLE FOOD COMPANY, INC.,
DOLE PACKAGED FOODS, LLC,

19 Defendants.

Case No. CV12-01831 LHK

STATEMENT OF RECENT DECISION

Hearing Date: December 6, 2012

Time: 1:30 p.m.

Judge: Hon. Lucy H. Koh

Action Filed: April 11, 2012

1 Defendants Dole Food Company, Inc. and Dole Packaged Foods, LLC (“Dole”), through
 2 their undersigned counsel, submit this Statement of Recent Decision to bring to the Court’s
 3 attention a relevant judicial opinion that has been published since Dole filed its reply¹ in this case:
 4 *Reid v. Johnson & Johnson*, No. 11cv1310 L (BLM), 2012 U.S. Dist. LEXIS 133408 (S.D. Cal.
 5 Sept. 18, 2012). The decision is attached as Exhibit A.

6 Plaintiff in *Reid* alleged that Johnson & Johnson’s product Benecol (similar to margarine)
 7 was misbranded because its labels and website contained certain health claims that violated FDA
 8 regulations and California’s Sherman Law. (*See generally Reid* Class Action Complaint, attached
 9 as Exhibit B.) He further alleged that the health claims were false, and that they rendered
 10 Benecol an improperly labeled drug. (*Id.* ¶¶ 100-107.) Plaintiff Reid asserted causes of action
 11 for violations of (1) the UCL unlawful business practices prong, (2) the UCL unfair and
 12 fraudulent business practices prong, (3) the FAL, and (4) the CLRA. *See Reid*, 2012 U.S. Dist.
 13 LEXIS 133408 at *6.

14 The court found that Plaintiff lacked standing to bring any of his claims. *Id.*, at *12. In so
 15 holding, Judge Lorenz agreed with Johnson & Johnson that Mr. Reid had not adequately pled
 16 reliance: “the Court finds, even at the pleading stage, that it is not possible for the reasonable
 17 consumer to be deceived by Benecol’s ‘No Trans Fat’ and ‘No Trans Fatty Acids’ labels” where
 18 the ingredient list shows that the product contains “a small amount of partially hydrogenated oils
 19 and trans fats.” *Id.*, at *11-12.

20 The court also determined that all of Plaintiff’s claims would be preempted, as they
 21 “essentially ask the Court to rule on issues that the FDA has not yet finalized and seek[] to
 22 impose a different, outdated interim rule requirement” *Id.*, at *21-22.

23 Before conducting its analysis, the court stated that Rule 9(b) applied to all Plaintiff’s
 24 claims because his claims were based on allegations that Johnson & Johnson had engaged in
 25 fraudulent labeling of its product. *Id.*, at *7-8.

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 28 ¹ Dole’s reply was filed September 14, 2012. (Docket No. 37.)

1 Dated: October 22, 2012

2 WILLIAM L. STERN
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6 By: /s/ William L. Stern
7 William L. Stern

8 Attorneys for Defendants
9 DOLE FOOD COMPANY, INC.,
10 DOLE PACKAGED FOODS, LLC
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PROOF OF SERVICE BY MAIL
(Code Civ. Proc. §§ 1013(a), 2015.5)

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California 94105-2482; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for mailing with the United States Postal Service and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited with the United States Postal Service on the same date that it is placed at Morrison & Foerster with postage thereon fully prepaid for collection and mailing.

I further declare that on the date hereof I served a copy of:

STATEMENT OF RECENT DECISION

on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San Francisco, California 94105-2482, in accordance with Morrison & Foerster's ordinary business practices:

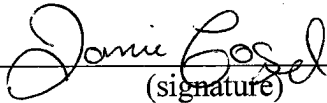
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at San Francisco, California, this 22nd day of October, 2012.

Janie Fogel
(typed)


(signature)